



[4830-01-p]

## DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 40, 49, and 602

[TD 9621]

RIN 1545-BJ40

Indoor Tanning Services; Excise Taxes

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations on the indoor tanning services excise tax imposed by the Patient Protection and Affordable Care Act. These final regulations affect persons that use, provide, or pay for indoor tanning services.

DATES: Effective Date: These regulations are effective on **[INSERT DATE OF PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER]**.

Applicability Dates: For dates of applicability, see §§40.0-1(d), 40.6302(c)-1(f), and 49.5000B-1(h).

FOR FURTHER INFORMATION CONTACT: Michael H. Beker or Natalie A. Payne, at (202) 622-3130 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

### **Paperwork Reduction Act**

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget under control number 1545-2177. The collection of information in these final regulations is in §49.5000B-1.

The information is required to be maintained by the provider of indoor tanning services to accurately calculate the tax on indoor tanning services when those services are offered with other goods and services.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

## **Background**

This document amends the Excise Tax Procedural Regulations (26 CFR part 40) and the Facilities and Services Excise Tax Regulations (26 CFR part 49) under section 5000B of the Internal Revenue Code (Code). Section 5000B was added to the Code by section 10907 of the Patient Protection and Affordable Care Act, Public Law 111-148 (124 Stat. 119 (2010)), to impose an excise tax on indoor tanning services. On June 15, 2010, temporary regulations relating to this topic and a notice of proposed rulemaking cross-referencing the temporary regulations were published in the **Federal Register** (TD 9486, 75 FR 33683; REG-112841-10, 75 FR 33740) (2010 regulations). Written and electronic comments were received and a public hearing was held on October 11, 2011. All comments were considered and are available for public inspection at <http://www.regulations.gov>. After considering the written comments and comments made at the public hearing, the proposed regulations are adopted as final

regulations by this Treasury decision and the corresponding temporary regulations are removed.

Public comments on the 2010 regulations identified two issues that the IRS and the Treasury Department will study further and on which the IRS and the Treasury Department request additional comments. Those issues, the treatment of bundled services and undesignated payment cards, are discussed later in this preamble.

Comments on those issues should be submitted in writing by **[INSERT DATE 120 DAYS FROM DATE OF PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER]** and can be mailed to the Office of Associate Chief Counsel (Passthroughs and Special Industries), Re: REG-112841-10, CC:PSI:B7, Room 5314, 1111 Constitution Avenue NW., Washington, DC 20224. All comments received will be available for public inspection at <http://www.regulations.gov> (IRS REG-112841-10).

### **Summary of Comments**

Qualified Physical Fitness Facilities. Commenters questioned the exception for Qualified Physical Fitness Facilities (QPFFs) in the 2010 regulations.

The 2010 regulations exempt from the tax any membership fee paid to a QPFF that includes access to indoor tanning services. In a QPFF, taking into consideration all of the facts and circumstances, the predominant business or activity of the facility is to serve as a physical fitness facility. The 2010 regulations limit the definition of a QPFF to a business that does not charge separately for indoor tanning services, offer such services to the general public, or offer different membership fee rates based on access to indoor tanning services.

Commenters stated that an exception for QPFFs does not appear in section 5000B and suggested that there is no compelling reason to differentiate these facilities from other indoor tanning service facilities. Commenters argued that while other providers of bundled services must use a complicated method of determining the amount attributable to indoor tanning services (as described in §49.5000B-1T(d)(3) of the 2010 regulations), QPFFs are exempt from the tax even though they provide the same indoor tanning services. Thus, these commenters suggested, the exception for QPFFs creates an unfair competitive advantage for some providers of indoor tanning services over others, and should not be included in the final regulations.

The final regulations do not adopt this suggestion. Access to indoor tanning services is incidental to a QPFF's predominant business or activity. Customers of a QPFF typically pay a monthly fee in exchange for access to all equipment in the QPFF, including any indoor tanning equipment. Requiring a QPFF to allocate its customers' monthly membership fees among tanning and non-tanning services under such an arrangement would be burdensome and difficult to administer. In contrast, non-QPFF providers of bundled goods and services typically offer indoor tanning services to customers as part of the purchase of a package of specific goods or services. This generally allows the provider to determine the portion of the purchase price that relates to the use of indoor tanning services by the customer and allocate the appropriate portion of the purchase price to those services.

Free indoor tanning services; bonus points. Commenters requested guidance on the application of the tax to free indoor tanning services and indoor tanning services that are sold at reduced rates.

The final regulations provide that the section 5000B tax only applies if an amount is paid for indoor tanning services. If services are provided at a reduced rate, the tax applies to the amount actually paid for the services. See Rev. Rul. 84-12 (1984-1 CB 211) and the rulings cited therein. Also consistent with Rev. Rul. 84-12, the final regulations do not apply the tax to indoor tanning services that are obtained by redemption of “bonus points” through a loyalty program or similar program. In the case of promotions that entitle a customer to a “free” tan with the purchase of a certain number of tans, the amount paid for the purchased tans reflects a reduced price for all of the tans rather than a package of tans at full price coupled with a “free” purchased tan. Thus, the tax is imposed on the purchase of the package of tans rather than on the redemption of the additional tan.

Bundled goods and services. If a provider (other than a QPFF) sells bundled services in which access to indoor tanning services (in a specified or unlimited amount) over a period of time is bundled with other goods and services, the 2010 regulations set out a formula to determine the amount reasonably attributable to indoor tanning services.

Commenters noted that there are no commercially available point-of-sale software programs that automatically calculate the tax on the sale of indoor tanning services that are bundled with other goods and services. Thus, providers must manually calculate the tax on these types of sales, a process that the commenters said is time consuming, expensive, and prone to error.

The final regulations do not change the rules for bundled goods and services. The statute imposes the tax on indoor tanning services; if those services are bundled

with other goods and services, the provider must determine the amount of the payment for the bundled goods and services that is reasonably attributable to indoor tanning services. The 2010 regulations set forth a reasonable method for making this determination, which is retained with minor clarifications in the final regulations. However, the final regulations also authorize the Treasury Department and the IRS to issue future guidance to provide additional options for making this determination. The Treasury Department and the IRS request comments on other reasonable methods for determining the amount of a payment for bundled goods and services that is reasonably attributable to indoor tanning services.

Undesignated payment cards. The 2010 regulations define an undesignated payment card as a gift certificate, gift card, or similar item that can be redeemed for goods or services that may, but do not necessarily, include indoor tanning services. Under the 2010 regulations, the tax is not imposed on the purchase of these cards; rather, the tax is imposed only when the card is redeemed specifically to pay for indoor tanning service.

Commenters noted that, in practice, a provider can collect the tax only when the card is bought and not when the card is redeemed for indoor tanning service. Thus, the commenters suggested that the tax be imposed on the purchase of an undesignated payment card. Providers could either estimate how much of the card will be used for indoor tanning service in the future or collect tax on the entire purchase price.

The final regulations do not adopt this suggestion. However, the Treasury Department and the IRS welcome comments on this issue. The final regulations

authorize the Treasury Department and the IRS to issue future guidance to provide additional options for administering the tax with respect to undesignated payment cards.

Form 720. The temporary regulations require the tax to be reported and paid quarterly on Form 720, “Quarterly Federal Excise Tax Return.” Commenters suggested that Form 720 is too complex or burdensome for the average provider to complete and file. These commenters request that the IRS issue a special tax return form specifically and exclusively for reporting the section 5000B tax.

The final regulations do not adopt this suggestion. Form 720 is the standard form used to report many excise taxes, including the other types of excise taxes collected from a customer upon the purchase of services, such as the taxes on communications services and transportation of persons and property by air. In addition, the Treasury Department and the IRS believe that creating a new form would add unnecessary complexity. For more information about reporting requirements, see §40.6011(a)-1(a).

### **Additional Clarification of 2010 Regulations**

Membership and enrollment fees. The final regulations clarify that the tax is imposed on amounts paid for prepaid monthly membership and enrollment fees to a provider of indoor tanning services, other than a QPFF, even if a member does not use any indoor tanning services during the period to which the fee relates.

Some providers offer monthly membership programs through which customers receive a number of tanning sessions at a lower cost than would be charged for each session individually. Some of these providers charge customers an enrollment fee

when the customers join a membership program. Typically, the customer pays the enrollment fee before paying the first monthly membership charge.

Some providers also impose fees on their customers to allow the customer to skip one or more months of membership dues without being charged an enrollment fee when the customer restarts the monthly membership. Amounts paid to a provider that temporarily suspend a periodic membership program are amounts paid for indoor tanning services. Because payment of these fees allows the customer to receive indoor tanning services at reduced prices, the final regulations clarify that these fees are subject to the section 5000B tax as amounts paid for indoor tanning services.

### **Availability of IRS Documents**

The IRS revenue ruling cited in this preamble is published in the Internal Revenue Cumulative Bulletin and is available from the Superintendent of Documents, P.O. Box 371954, Pittsburgh PA, 15250-7954.

### **Special Analyses**

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that these regulations are designed to accommodate the recordkeeping methods currently used by small entities that provide indoor tanning services. The regulations merely implement the tax imposed by section 5000B of the



Code, and section 6001 of the Code already requires taxpayers to keep books and records sufficient to show whether or not they are liable for tax. The information necessary to prepare these records is readily available to providers, and this recordkeeping will take little additional time to complete. Accordingly, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking that preceded these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business, and no comments were received.

### **Drafting Information**

The principal author of these regulations is Michael H. Beker, Office of the Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and the Treasury Department participated in their development.

### **List of Subjects**

#### **26 CFR Part 40**

Excise taxes, Reporting and recordkeeping requirements.

#### **26 CFR Part 49**

Excise taxes, Reporting and recordkeeping requirements, Telephone, Transportation.

#### **26 CFR Part 602**

Reporting and recordkeeping requirements.

### **Adoption of Amendments to the Regulations**

Accordingly, 26 CFR parts 40, 49, and 602 are amended as follows:

## PART 40--EXCISE TAX PROCEDURAL REGULATIONS

Paragraph 1. The authority citation for part 40 continues to read in part as follows:

Authority: 26 U.S.C. 7805. \* \* \*

Par. 2. Section 40.0-1 is amended as follows:

1. Paragraph (a), second sentence, is amended by removing the language “and 39” and adding “39, and 49” in its place.

2. Paragraph (a), third sentence, is amended by removing the language “and chapter 39 to taxes imposed on registration-required obligations” and adding “chapter 39 to taxes imposed on registration-required obligations; and chapter 49 to taxes imposed on indoor tanning services” in its place.

3. Paragraph (d) is revised.

4. Paragraphs (e) and (f) are removed.

The revision reads as follows:

### §40.0-1 Introduction.

\* \* \* \* \*

(d) Effective/applicability date. This part applies to returns that relate to periods beginning after March 31, 2013. For rules that apply before that date, see 26 CFR part 40 (revised as of April 1, 2013).

### **§40.0-1T [Removed]**

Par. 3. Section 40.0-1T is removed.

Par. 4. Section 40.6302(c)-1 is amended as follows:

1. Paragraph (a)(1) is amended by removing the language “by statute, by §40.6302(c)-1T(g),” and adding “by statute” in its place.
2. Paragraph (e)(1)(iii) is amended by removing the language “chemicals); and” and adding “chemicals);” in its place.
3. Paragraph (e)(1)(iv) is amended by removing the language “plans).” and adding “plans); and” in its place.
4. Paragraph (e)(1)(v) is added.
5. Paragraph (f) is revised.
6. Paragraph (g) is removed.

The addition and revision read as follows:

§40.6302(c)-1 Deposits.

\* \* \* \* \*

(e) \* \* \*

(1) \* \* \*

(v) Section 5000B (relating to indoor tanning services).

\* \* \* \* \*

(f) Effective/applicability date. This section applies to deposits and payments made after March 31, 2013. For rules that apply before that date, see 26 CFR part 40 (revised as of April 1, 2013).

**§40.6302(c)-1T [Removed]**

Par. 5. Section 40.6302(c)-1T is removed.

**PART 49--FACILITIES AND SERVICES EXCISE TAX**

Par. 6. The authority citation for part 49 continues to read in part as follows:

Authority: 26 U.S.C. 7805. \* \* \*

Par. 7. Section 49.0-1 is revised to read as follows:

§49.0-1 Introduction.

The regulations in this part 49 are designated “Facilities and Services Excise Tax Regulations.” The regulations relate to the taxes on communications and transportation by air imposed by chapter 33 of the Internal Revenue Code and the taxes on indoor tanning services imposed by section 5000B. See part 40 of this chapter for regulations relating to returns, payments, and deposits of these taxes.

**§49.0-3T [Removed]**

Par. 8. Section 49.0-3T is removed.

Par. 9. Subpart G is revised to read as follows:

**Subpart G--Indoor Tanning Services**

§49.5000B-1 Indoor tanning services.

(a) Overview. This section provides rules for the tax imposed by section 5000B on any indoor tanning service.

(b) Imposition of tax--(1) General rule. Tax is imposed by section 5000B at the time of payment for any indoor tanning service.

(2) Undesignated payment cards--In general. Payment for indoor tanning services is made when an undesignated payment card is redeemed, in whole or in part, to pay for indoor tanning services (and not when a payment is made to purchase the undesignated payment card).

(c) Definitions--(1) The term indoor tanning service means a service employing any electronic product designed to incorporate one or more ultraviolet lamps and

intended for the irradiation of an individual by ultraviolet radiation, with wavelengths in air between 200 and 400 nanometers, to induce skin tanning. The term does not include phototherapy service performed by, and on the premises of, a licensed medical professional (such as a dermatologist, psychologist, or registered nurse).

(2) The term other goods and services includes, but is not limited to, protective eyewear, footwear, towels, and tanning lotions; manicures, pedicures, and other cosmetic or spa treatments; and access to sport or exercise facilities.

(3) The term phototherapy service means a service that exposes an individual to specific wavelengths of light for the treatment of--

(i) Dermatological conditions (such as acne, psoriasis, and eczema);

(ii) Sleep disorders;

(iii) Seasonal affective disorder or other psychiatric disorder;

(iv) Neonatal jaundice;

(v) Wound healing; or

(vi) Other medical condition determined by a licensed medical professional to be treatable by exposing the individual to specific wavelengths of light.

(4) The term provider means a person that provides an indoor tanning service as defined in paragraph (c)(1) of this section.

(5) The term qualified physical fitness facility means a facility--

(i) In which the predominant business or activity is providing equipment and services to its members for purposes of exercise and physical fitness (determined by taking into consideration all of the facts and circumstances, such as the cost of the equipment, variety of services offered, actual usage of services by customers, revenue

generated by different services, and how the entity holds itself out to the public through advertising or other means);

(ii) In which providing indoor tanning services is not a substantial part of the business or activity; and

(iii) That does not sell indoor tanning services for a fee to the public or otherwise offer different pricing options to its members based in whole or in part on access to indoor tanning services.

(6) The term undesignated payment card means a gift certificate, gift card, or similar item that can be redeemed for goods or services that may, but do not necessarily, include indoor tanning services.

(d) Application of tax--(1) Tax on total amount paid for indoor tanning services--(i) In general. The tax is imposed on the total amount paid for indoor tanning services, including any amount paid by insurance. The total amount paid is presumed to include the tax if the tax is not separately stated.

(ii) Free services and reduced rates. The tax does not apply to indoor tanning services that are provided free of charge. Indoor tanning services are provided free of charge if no one pays anything of value to the provider of the service for the indoor tanning service. Thus, for example, tax is not imposed on the redemption of a promotional coupon for indoor tanning services if the coupon is provided at no cost and at no obligation to purchase anything. If indoor tanning services are provided at a reduced rate, the tax applies to the amount actually paid for the services.

(iii) Bonus points. The redemption of benefits such as “bonus points” under a loyalty program or similar program or promotion is not a payment for indoor tanning

services. Thus, for example, in a promotion that entitles a customer to a “free” tan with the purchase of four tans, tax is not imposed on the redemption of the fifth tan because the amount paid for the four tans included a reduced price for the fifth tan.

(iv) Other fees. Fees for starting, joining, registering, enrolling, and similar fees paid to a provider to join a monthly (or other periodic) membership program that provides indoor tanning services are amounts paid for indoor tanning services. Similarly, amounts paid to a provider that temporarily suspend a periodic membership program are amounts paid for indoor tanning services.

(2) Charges for other goods and services; tanning services separately stated. If a payment covers charges for indoor tanning services as well as other goods and services, the charges for other goods and services may be excluded in computing the tax payable on the amount paid, if the charges--

- (i) Are separable (regardless of the manner of invoicing the charges);
- (ii) Do not exceed the fair market value of such other goods and services; and
- (iii) Are shown in the exact amounts in the provider’s records pertaining to the indoor tanning services charge.

(3) Charges for other goods and services; tanning services bundled. This paragraph (d)(3) applies if paragraph (d)(2) of this section does not apply. If a provider offers indoor tanning services (whether of a specified or unlimited amount, including “free” or reduced-rate indoor tanning services) bundled with other goods and services, the payment for the bundled services includes an amount paid for indoor tanning services. The tax applies to that portion of the amount paid to the provider that is

reasonably attributable to indoor tanning services. The amount reasonably attributable to indoor tanning services may be determined by--

(i) Applying to the total amount paid a ratio determined by comparing--

(A) The provider's charge for indoor tanning services not in bundled services or, if the provider only charges for indoor tanning services as part of bundled services, the fair market value of similar indoor tanning services (based on the amount charged by comparable providers in the same geographic area); to

(B) The charge determined in paragraph (d)(3)(i)(A) of this section plus the provider's charge for the other goods and services in the bundled services or, if the provider only charges for other goods and services as part of bundled services, the fair market value of similar goods and services (based on the amount charged by comparable providers in the same geographic area); or

(ii) Any other method allowed in guidance published in the Internal Revenue Bulletin.

(4) Exemption; qualified physical fitness facilities. No portion of a payment to a qualified physical fitness facility (within the meaning of paragraph (c)(5) of this section) that includes access to indoor tanning services is treated as a payment for indoor tanning services.

(e) Person liable for the tax--(1) General rule. The person who pays for the indoor tanning service is deemed to be the person on whom the service is performed for purposes of collecting the tax. Thus, the person paying for the indoor tanning service is liable for the tax at the time of payment.



(2) Undesignated payment cards--(i) In general. In the case of a payment made with an undesignated payment card (as defined in paragraph (c)(6) of this section), the person who redeems the card, in whole or in part, to pay specifically for indoor tanning services is the person who pays for the indoor tanning services. Thus, the person who redeems an undesignated payment card, in whole or in part, to pay specifically for indoor tanning services is liable for the tax at the time such payment is made (as described in paragraph (b)(2) of this section).

(ii) Alternative treatment. The Treasury Department and IRS may provide additional options for the treatment of undesignated payment cards in guidance published in the Internal Revenue Bulletin.

(3) Tax not collected at time of payment. If the person paying for the indoor tanning services does not pay the tax to the person receiving the payment for the services at the time of payment for the services, the person receiving the payment is liable for the tax.

(f) Persons receiving payment must collect tax. Every person receiving a payment for indoor tanning services on which a tax is imposed under this section must collect the amount of the tax from the person making that payment.

(g) Examples. The following examples illustrate the application of section 5000B and this section.

Example 1: Imposition of tax; general rule. (i) P is a nail salon that also provides indoor tanning service incidental to its primary business of providing nail salon services. P advertises a price of \$15.00 (exclusive of the tax imposed by section 5000B) for one 10-minute indoor tanning service. During a period when the tax is 10 percent of the amount paid, P calculates the section 5000B tax on \$15.00 as provided by paragraph (d)(1) of this section. Thus, the tax is \$1.50 (\$15.00 X 10%). The person paying for the service is liable for the tax when that person pays for the services. If P does not collect

the tax from the person at the time of the payment for the services, P is liable for the tax.

(ii) The facts are the same as in paragraph (i) of this example except that P's advertised price of \$15.00 includes the tanning tax. In this case, the tax is \$1.36 ( $\$15.00 \times 10\%/110\%$ ) under the second sentence of paragraph (d)(1) of this section.

Example 2: Charges for other goods and services; tanning services separately stated. P provides indoor tanning services and other goods and services. On July 1, 2013, A, an individual, pays P for one 10-minute indoor tanning service and one pair of protective eyewear. P charges \$15.00 for the 10-minute indoor tanning service and \$2.00 for a pair of protective eyewear. The \$2.00 charge for the protective eyewear does not exceed its fair market value. The invoice from P is \$17.00 (exclusive of the tax imposed by section 5000B) and separately states the cost of the protective eyewear. Because the cost of the protective eyewear is separately stated, P calculates the section 5000B tax on \$15.00 as provided by paragraph (d)(2) of this section. A is liable for the tax when A pays for the services. If P does not collect the tax from A at the time A pays for the services, P is liable for the tax.

Example 3: Charges for other goods and services; tanning services bundled. P provides indoor tanning services and other goods and services and offers bundled services. On July 1, 2013, A, an individual, buys bundled service from P that includes 10 swimming lessons, the use of towels while on P's premises, one pair of protective eyewear, and 2 "free" 10-minute indoor tanning services. P charges \$252.00 (exclusive of the tax imposed by section 5000B) for the bundled services. If these services are purchased separately, P charges (exclusive of the tax imposed by section 5000B) \$25.00 per swimming lesson, \$15.00 for a 10-minute indoor tanning service, \$2.00 for the protective eyewear, and does not charge for the use of towels while on P's premises. As determined under paragraph (d)(3) of this section, the section 5000B tax applies to the amount reasonably attributable to the indoor tanning service, which is \$26.81 ( $(\$30.00/\$282.00) \times \$252.00$ ).

Example 4: Person liable for the tax. On July 1, 2013, A buys bundled services (described in Example 3) from P as a gift for B. Under paragraph (e)(1) of this section, A is deemed to be the person on whom the indoor tanning services are performed for purposes of collecting the tax. Therefore, under paragraph (b)(1) of this section, A is liable for the tax when A pays for the services. The tax will be computed under the rules of paragraph (d)(3) of this section. If A does not pay the tax at the time A pays for the services, P is liable for the tax.

Example 5: Undesignated payment cards. (i) P operates a spa that provides a variety of cosmetic goods and services, including indoor tanning services. On July 1, 2013, A buys a gift certificate in the amount of \$100.00 from P as a gift for B. The gift certificate may be redeemed by B for B's choice among several services offered by P, including indoor tanning services. On July 15, 2013, B partially redeems the gift certificate to pay for one 10-minute indoor tanning service.

(ii) Under paragraph (b)(2) of this section, a payment for indoor tanning services is made, and the tax under section 5000B is imposed, on July 15, 2013, when B partially redeems the gift certificate to pay for one indoor tanning service. Under paragraph (e)(2) of this section, B is the person who pays for the indoor tanning services. Therefore, B is liable for the tax, computed under the rules of paragraph (d) of this section, and pays the tax by permitting P to debit the amount of the tax from the balance of the gift certificate or by paying the amount of the tax to P in cash. If B does not pay the tax at the time B partially redeems the gift certificate to pay for the indoor tanning services, P is liable for the tax.

Example 6: Charges for other goods and services; tanning services bundled; amount attributable to tanning services. On July 1, 2013, A pays \$1,000.00 (exclusive of the tax imposed by section 5000B) to spa P for the right to use the following equipment and services during the month of July: up to four massages or facials, unlimited use of a sauna, steam room, showers, and towel service, and unlimited indoor tanning services. If the services are purchased separately, P charges (exclusive of the tax imposed by section 5000B) \$150.00 for unlimited indoor tanning services during the month of July, and \$900.00 for the other equipment and services during the month of July, not including indoor tanning services. Under paragraph (b) of this section, A has made a payment for indoor tanning services and the tax will be computed under the rules of paragraph (d)(3) of this section. As determined under paragraph (d)(3) of this section, the section 5000B tax applies to the amount reasonably attributable to the indoor tanning services, which is \$142.86  $((\$150.00/\$1050.00) \times \$1000.00)$ . If A does not pay the tax at the time A pays for the bundled services, P is liable for the tax.

Example 7: Payments to qualified physical fitness facilities. P operates a full-service gym facility that offers fitness classes, multiple exercise machines (such as treadmills, stationary bicycles, weight training machines, and free weights), and has as its predominant business providing these facilities, equipment, and services to members for purposes of exercise and physical fitness. P provides its members with access to indoor tanning services, comprised of two tanning beds that meet the definition of indoor tanning services under paragraph (c)(1) of this section. P generally charges its members a fee for monthly usage of its facilities, equipment, and services, but also offers short-term or free trial memberships and allows non-members to purchase individual or a series of exercise classes. P does not charge any fee for the indoor tanning services, does not offer indoor tanning services separately from its other services, and has no membership tier or category that differs from others based on access to the indoor tanning services. P holds itself out to the public through advertising and marketing as providing equipment and services to improve physical fitness. On July 1, 2013, A pays a membership fee to P in return for use of P's facility during the month of July. Under paragraph (d)(4) of this section, no portion of A's membership fee payment is treated as a payment made for indoor tanning services, because A is a qualified physical fitness facility under paragraph (c)(5) of this section. Therefore, no liability for tax arises under section 5000B.

(h) Effective/applicability date. This section applies to amounts paid on or after

**[INSERT DATE OF PUBLICATION OF THIS DOCUMENT IN THE FEDERAL**

**REGISTER]** For rules that apply before that date, see 26 CFR part 49 (revised as of April 1, 2013).

PART 602--OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION  
ACT

Par. 10. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 11. In §602.101, paragraph (b) is amended by removing the entry for §1.5000B-1 and adding an entry for 49.5000B-1 in numerical order to the table to read as follows:

§602.101 OMB Control numbers.

\* \* \* \* \*

(b) \* \* \*

CFR part or section where identified and described	Current OMB control No.
* * * * *	
49.5000B-1.....	1545-2177
* * * * *	

Beth Tucker  
Acting Deputy Commissioner for Services and Enforcement.

Approved: May 31, 2013

Mark J. Mazur  
Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2013-13876 Filed 06/10/2013 at 8:45 am; Publication Date: 06/11/2013]